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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

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OGC

March 24, 1982

Mr. Peter J. Denning
Computer Sciences Department
Purdue University
West Lafayette, Indiana 47907

Dear Mr. Denning:

Thank you for your letter of 24 February 1982, giving me your views on the proposed revision of Executive Order 12065, "National Security Information."

I appreciate your interest in this subject and I believe your views should be made available to Mr. Steven Garfinkel, Director, Information Security Oversight Office (ISOO), Washington, D.C. 20405. You may wish to present your views to Mr. Garfinkel directly.

At the same time, I believe you would want to know that, in my view, the concerns raised in your letter about the purpose and ultimate effects of this proposed revision are largely unfounded.

The present draft revision of Executive Order 12065 represents the product of almost a year's worth of careful consideration and examination by numerous Executive Branch agencies. I should emphasize that neither I nor this Agency can act as a spokesman for the revised order or for Executive Branch policy in this regard, since this is a function exercised by the NSC and the ISOO. As part of this executive order revision process, the NSC has provided the draft revision to the Office of Management and Budget, which is presently considering further changes to the proposed order. Additional recommendations are also expected from the various Congressional committees currently reviewing the draft order. In these circumstances, there is no assurance that the revision as presently drafted will remain unchanged, or might instead be further modified before the order is presented to the President for signature. I can assure you, however, that the draft revision in its current form does not intend, nor will it result in, the consequences suggested in your letter.

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Firstly, the draft order does not alter present Government practice with respect to the classification of scientific or technological information. Section 1-602 of present Executive Order 12065 provides that "basic scientific research information not clearly related to the national security may not be classified." Because this provision is self-evident and merely restates the clear dictates of draft Section 1.3, it has been deleted as unnecessary. Draft Section 1.3(a)(6) specifically states that "scientific and technological matters" may be considered for classification only if they "relate to the national security." The damage to the national security that must result from disclosure of such technological information under draft Section 1.3(b) further ensures that scientific information unrelated to the national security will not be classified.

As to Section 1-603 of present Executive Order 12065, this section provides that a product of non-government research or development may not be classified unless the government acquires a proprietary interest in the product. Again, this provision simply restates a proposition clearly set forth in the definition of "information" contained at draft Section 6.1(b). "Information" subject to the order is limited under this section to information or material that is owned by or produced for the Government. This provision adequately ensures that non-U.S. owned or controlled products will not be subject to classification under the order. Moreover, the Patent Secrecy Act specifically addresses when and under what circumstances certain privately developed inventions or products may be kept secret for national security reasons. The scheme contemplated by this statute should not be impaired by the inclusion of an ambiguous and unnecessary provision in the executive order on classification.

Secondly, the draft order does not greatly increase the amount of information that will be subject to classification. Information concerning cryptology, a confidential intelligence source, or the vulnerabilities or capabilities of certain national security-related systems, installations, projects or plans, are now listed as specific categories of information which may be considered for classification. By listing these additional categories of information, the proposed order is not expanding the subject matter area or amount of information which can be considered for classification. Information concerning cryptology, national security-related installations or projects, and confidential intelligence sources, is being considered for -- and actually -- classified under present Executive Order 12065.

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Information concerning cryptography and national security-related systems or plans was, in fact, accorded special protection under predecessor order Executive Order 11652. Certain agencies, however, have encountered difficulty in Freedom of Information Act litigation in fitting the above information into the existing categories of information contained in Executive Order 12065. By specifically listing these three additional categories of information, the proposed order does not intend to expand the existing universe of classifiable information, but simply to lessen the burden that agencies face in protecting information which clearly impacts on the national security but is not adequately described in the existing categories of information contained in Executive Order 12065. The addition of these categories will simplify the task of both classification authorities and the courts, as clearer guidance as to the types of information which are properly considered for classification will be now provided.

Thus, the substantive classification standards that information must meet prior to classification are left largely unchanged in the proposed revision. This new order will not significantly expand the existing universe of classifiable information. Nor will the order permit the classification of scientific or technological information unless this information is owned by -- or produced for -- the Government, is clearly related to the national security, and may be expected -- if disclosed -- to cause damage to the national defense or foreign relations of the United States.

Moreover, the draft order also leaves unchanged the public's right to seek a declassification review immediately after the information's creation and subsequent classification. Section 3.4 of the draft order ensures that those records which are needed for permanent Governmental recordkeeping or historical research purposes, or are otherwise requested by interested members of the public, remain available and are regularly reviewed for declassification.

I caution again that the above comments are based on the most recent draft our lawyers have seen -- I do not know what changes are in the works. But I doubt that the final document will pick up any more restrictive elements related to your direct concerns.

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I continue to believe that this kind of dialogue between public servants and scientists provides the best means to jointly develop measures that ensure essential scientific inquiry and freedom while also protecting vital national security interests. For this reason, I welcome your letter, and I urge you and your colleagues to continue to seek solutions to problems of mutual concern.

Sincerely,

B. R. INMAN
Admiral, U.S. Navy
Deputy Director of Central Intelligence

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